

1  
2  
3  
4 PEDRO CIRIA, et al.,  
5  
6

7 Plaintiffs,  
8  
9 v.  
10

11 CITY AND COUNTY OF SAN  
12 FRANCISCO, et al.,  
13

14 Defendants.  
15

16 Case No. [4:23-cv-02796-KAW](#)  
17  
18

**19 ORDER GRANTING IN PART AND  
20 DENYING IN PART DEFENDANTS'  
21 MOTION TO DISMISS**

22 Re: Dkt. No. 26  
23

24 On October 16, 2023, Defendants City and County of San Francisco, Arthur Gerrans,  
25 James Crowley, and Nicholas J. Rubino filed a motion to dismiss Plaintiffs' first amended  
26 complaint.

27 On January 18, 2024, the Court held a hearing, and having considered the parties'  
28 arguments and the relevant legal authority, GRANTS IN PART AND DENIES IN PART  
Defendants' motion to dismiss.

29  
30 **I. BACKGROUND**

31 On June 6, 2023, Plaintiffs Pedro Ciria and Yojana Paiz filed this lawsuit alleging loss of  
32 familial association under 42 U.S.C. § 1983, negligent infliction of emotional distress, and  
33 intentional infliction of emotional distress arising from the wrongful arrest and incarceration of  
34 father and partner Joaquin Ciria<sup>1</sup>.

35  
36 **A. Conviction of Joaquin Ciria**

37 On March 25, 1990, Felix Bastarrica was shot and killed in an alleyway in San Francisco.

38  
39  
40  
41  
42  
43  
44  
45  
46  
47  
48  
49  
50  
51  
52  
53  
54  
55  
56  
57  
58  
59  
60  
61  
62  
63  
64  
65  
66  
67  
68  
69  
70  
71  
72  
73  
74  
75  
76  
77  
78  
79  
80  
81  
82  
83  
84  
85  
86  
87  
88  
89  
90  
91  
92  
93  
94  
95  
96  
97  
98  
99  
100  
101  
102  
103  
104  
105  
106  
107  
108  
109  
110  
111  
112  
113  
114  
115  
116  
117  
118  
119  
120  
121  
122  
123  
124  
125  
126  
127  
128  
129  
130  
131  
132  
133  
134  
135  
136  
137  
138  
139  
140  
141  
142  
143  
144  
145  
146  
147  
148  
149  
150  
151  
152  
153  
154  
155  
156  
157  
158  
159  
160  
161  
162  
163  
164  
165  
166  
167  
168  
169  
170  
171  
172  
173  
174  
175  
176  
177  
178  
179  
180  
181  
182  
183  
184  
185  
186  
187  
188  
189  
190  
191  
192  
193  
194  
195  
196  
197  
198  
199  
200  
201  
202  
203  
204  
205  
206  
207  
208  
209  
210  
211  
212  
213  
214  
215  
216  
217  
218  
219  
220  
221  
222  
223  
224  
225  
226  
227  
228  
229  
230  
231  
232  
233  
234  
235  
236  
237  
238  
239  
240  
241  
242  
243  
244  
245  
246  
247  
248  
249  
250  
251  
252  
253  
254  
255  
256  
257  
258  
259  
260  
261  
262  
263  
264  
265  
266  
267  
268  
269  
270  
271  
272  
273  
274  
275  
276  
277  
278  
279  
280  
281  
282  
283  
284  
285  
286  
287  
288  
289  
290  
291  
292  
293  
294  
295  
296  
297  
298  
299  
300  
301  
302  
303  
304  
305  
306  
307  
308  
309  
310  
311  
312  
313  
314  
315  
316  
317  
318  
319  
320  
321  
322  
323  
324  
325  
326  
327  
328  
329  
330  
331  
332  
333  
334  
335  
336  
337  
338  
339  
340  
341  
342  
343  
344  
345  
346  
347  
348  
349  
350  
351  
352  
353  
354  
355  
356  
357  
358  
359  
360  
361  
362  
363  
364  
365  
366  
367  
368  
369  
370  
371  
372  
373  
374  
375  
376  
377  
378  
379  
380  
381  
382  
383  
384  
385  
386  
387  
388  
389  
390  
391  
392  
393  
394  
395  
396  
397  
398  
399  
400  
401  
402  
403  
404  
405  
406  
407  
408  
409  
410  
411  
412  
413  
414  
415  
416  
417  
418  
419  
420  
421  
422  
423  
424  
425  
426  
427  
428  
429  
430  
431  
432  
433  
434  
435  
436  
437  
438  
439  
440  
441  
442  
443  
444  
445  
446  
447  
448  
449  
450  
451  
452  
453  
454  
455  
456  
457  
458  
459  
460  
461  
462  
463  
464  
465  
466  
467  
468  
469  
470  
471  
472  
473  
474  
475  
476  
477  
478  
479  
480  
481  
482  
483  
484  
485  
486  
487  
488  
489  
490  
491  
492  
493  
494  
495  
496  
497  
498  
499  
500  
501  
502  
503  
504  
505  
506  
507  
508  
509  
510  
511  
512  
513  
514  
515  
516  
517  
518  
519  
520  
521  
522  
523  
524  
525  
526  
527  
528  
529  
530  
531  
532  
533  
534  
535  
536  
537  
538  
539  
540  
541  
542  
543  
544  
545  
546  
547  
548  
549  
550  
551  
552  
553  
554  
555  
556  
557  
558  
559  
5510  
5511  
5512  
5513  
5514  
5515  
5516  
5517  
5518  
5519  
5520  
5521  
5522  
5523  
5524  
5525  
5526  
5527  
5528  
5529  
5530  
5531  
5532  
5533  
5534  
5535  
5536  
5537  
5538  
5539  
5540  
5541  
5542  
5543  
5544  
5545  
5546  
5547  
5548  
5549  
5550  
5551  
5552  
5553  
5554  
5555  
5556  
5557  
5558  
5559  
55510  
55511  
55512  
55513  
55514  
55515  
55516  
55517  
55518  
55519  
55520  
55521  
55522  
55523  
55524  
55525  
55526  
55527  
55528  
55529  
55530  
55531  
55532  
55533  
55534  
55535  
55536  
55537  
55538  
55539  
55540  
55541  
55542  
55543  
55544  
55545  
55546  
55547  
55548  
55549  
55550  
55551  
55552  
55553  
55554  
55555  
55556  
55557  
55558  
55559  
555510  
555511  
555512  
555513  
555514  
555515  
555516  
555517  
555518  
555519  
555520  
555521  
555522  
555523  
555524  
555525  
555526  
555527  
555528  
555529  
555530  
555531  
555532  
555533  
555534  
555535  
555536  
555537  
555538  
555539  
555540  
555541  
555542  
555543  
555544  
555545  
555546  
555547  
555548  
555549  
555550  
555551  
555552  
555553  
555554  
555555  
555556  
555557  
555558  
555559  
5555510  
5555511  
5555512  
5555513  
5555514  
5555515  
5555516  
5555517  
5555518  
5555519  
5555520  
5555521  
5555522  
5555523  
5555524  
5555525  
5555526  
5555527  
5555528  
5555529  
5555530  
5555531  
5555532  
5555533  
5555534  
5555535  
5555536  
5555537  
5555538  
5555539  
5555540  
5555541  
5555542  
5555543  
5555544  
5555545  
5555546  
5555547  
5555548  
5555549  
5555550  
5555551  
5555552  
5555553  
5555554  
5555555  
5555556  
5555557  
5555558  
5555559  
55555510  
55555511  
55555512  
55555513  
55555514  
55555515  
55555516  
55555517  
55555518  
55555519  
55555520  
55555521  
55555522  
55555523  
55555524  
55555525  
55555526  
55555527  
55555528  
55555529  
55555530  
55555531  
55555532  
55555533  
55555534  
55555535  
55555536  
55555537  
55555538  
55555539  
55555540  
55555541  
55555542  
55555543  
55555544  
55555545  
55555546  
55555547  
55555548  
55555549  
55555550  
55555551  
55555552  
55555553  
55555554  
55555555  
55555556  
55555557  
55555558  
55555559  
555555510  
555555511  
555555512  
555555513  
555555514  
555555515  
555555516  
555555517  
555555518  
555555519  
555555520  
555555521  
555555522  
555555523  
555555524  
555555525  
555555526  
555555527  
555555528  
555555529  
555555530  
555555531  
555555532  
555555533  
555555534  
555555535  
555555536  
555555537  
555555538  
555555539  
555555540  
555555541  
555555542  
555555543  
555555544  
555555545  
555555546  
555555547  
555555548  
555555549  
555555550  
555555551  
555555552  
555555553  
555555554  
555555555  
555555556  
555555557  
555555558  
555555559  
5555555510  
5555555511  
5555555512  
5555555513  
5555555514  
5555555515  
5555555516  
5555555517  
5555555518  
5555555519  
5555555520  
5555555521  
5555555522  
5555555523  
5555555524  
5555555525  
5555555526  
5555555527  
5555555528  
5555555529  
5555555530  
5555555531  
5555555532  
5555555533  
5555555534  
5555555535  
5555555536  
5555555537  
5555555538  
5555555539  
5555555540  
5555555541  
5555555542  
5555555543  
5555555544  
5555555545  
5555555546  
5555555547  
5555555548  
5555555549  
5555555550  
5555555551  
5555555552  
5555555553  
5555555554  
5555555555  
5555555556  
5555555557  
5555555558  
5555555559  
55555555510  
55555555511  
55555555512  
55555555513  
55555555514  
55555555515  
55555555516  
55555555517  
55555555518  
55555555519  
55555555520  
55555555521  
55555555522  
55555555523  
55555555524  
55555555525  
55555555526  
55555555527  
55555555528  
55555555529  
55555555530  
55555555531  
55555555532  
55555555533  
55555555534  
55555555535  
55555555536  
55555555537  
55555555538  
55555555539  
55555555540  
55555555541  
55555555542  
55555555543  
55555555544  
55555555545  
55555555546  
55555555547  
55555555548  
55555555549  
55555555550  
55555555551  
55555555552  
55555555553  
55555555554  
55555555555  
55555555556  
55555555557  
55555555558  
55555555559  
555555555510  
555555555511  
555555555512  
555555555513  
555555555514  
555555555515  
555555555516  
555555555517  
555555555518  
555555555519  
555555555520  
555555555521  
555555555522  
555555555523  
555555555524  
555555555525  
555555555526  
555555555527  
555555555528  
555555555529  
555555555530  
555555555531  
555555555532  
555555555533  
555555555534  
555555555535  
555555555536  
555555555537  
555555555538  
555555555539  
555555555540  
555555555541  
555555555542  
555555555543  
555555555544  
555555555545  
555555555546  
555555555547  
555555555548  
555555555549  
555555555550  
555555555551  
555555555552  
555555555553  
555555555554  
555555555555  
555555555556  
555555555557  
555555555558  
555555555559  
5555555555510  
5555555555511  
5555555555512  
5555555555513  
5555555555514  
5555555555515  
5555555555516  
5555555555517  
5555555555518  
5555555555519  
5555555555520  
5555555555521  
5555555555522  
5555555555523  
5555555555524  
5555555555525  
5555555555526  
5555555555527  
5555555555528  
5555555555529  
5555555555530  
5555555555531  
5555555555532  
5555555555533  
5555555555534  
5555555555535  
5555555555536  
5555555555537  
5555555555538  
5555555555539  
5555555555540  
5555555555541  
5555555555542  
5555555555543  
5555555555544  
5555555555545  
5555555555546  
5555555555547  
5555555555548  
5555555555549  
5555555555550  
5555555555551  
5555555555552  
5555555555553  
5555555555554  
5555555555555  
5555555555556  
5555555555557  
5555555555558  
5555555555559  
55555555555510  
55555555555511  
55555555555512  
55555555555513  
55555555555514  
55555555555515  
55555555555516  
55555555555517  
55555555555518  
55555555555519  
55555555555520  
55555555555521  
55555555555522  
55555555555523  
55555555555524  
55555555555525  
55555555555526  
55555555555527  
55555555555528  
55555555555529  
55555555555530  
55555555555531  
55555555555532  
55555555555533  
55555555555534  
55555555555535  
55555555555536  
55555555555537  
55555555555538  
55555555555539  
55555555555540  
55555555555541  
55555555555542  
55555555555543  
55555555555544  
55555555555545  
55555555555546  
55555555555547  
55555555555548  
55555555555549  
55555555555550  
55555555555551  
55555555555552  
55555555555553  
55555555555554  
55555555555555  
55555555555556  
55555555555557  
55555555555558  
55555555555559  
555555555555510  
555555555555511  
555555555555512  
555555555555513  
555555555555514  
555555555555515  
555555555555516  
555555555555517  
555555555555518  
555555555555519  
555555555555520  
555555555555521  
555555555555522  
555555555555523  
555555555555524  
555555555555525  
555555555555526  
555555555555527  
555555555555528  
555555555555529  
555555555555530  
555555555555531  
555555555555532  
555555555555533  
555555555555534  
555555555555535  
555555555555536  
555555555555537  
555555555555538  
555555555555539  
555555555555540  
555555555555541  
555555555555542  
555555555555543  
555555555555544  
555555555555545  
555555555555546  
555555555555547  
555555555555548  
555555555555549  
555555555555550  
555555555555551  
555555555555552  
555555555555553  
555555555555554  
555555555555555  
555555555555556  
555555555555557  
555555555555558  
555555555555559  
5555555555555510  
5555555555555511  
5555555555555512  
5555555555555513  
5555555555555514  
5555555555555515  
5555555555555516  
5555555555555517  
5555555555555518  
5555555555555519  
5555555555555520  
5555555555555521  
5555555555555522  
5555555555555523  
5555555555555524  
5555555555555525  
5555555555555526  
5555555555555527  
5555555555555528  
5555555555555529  
5555555555555530  
5555555555555531  
5555555555555532  
5555555555555533  
5555555555555534  
5555555555555535  
5555555555555536  
5555555555555537  
5555555555555538  
5555555555555539  
5555555555555540  
5555555555555541  
5555555555555542  
5555555555555543  
5555555555555544  
5555555555555545  
5555555555555546  
5555555555555547  
5555555555555548  
5555555555555549  
5555555555555550  
5555555555555551  
5555555555555552  
5555555555555553  
5555555555555554  
5555555555555555  
5555555555555556  
5555555555555557  
5555555555555558  
5555555555555559  
55555555555555510  
55555555555555511  
555555

1 (First Am. Compl., “FAC,” Dkt. No. 23 ¶ 13.) Following the murder, rumors spread that Joaquin  
2 was responsible, and, after a short period of time, he voluntarily spoke with Defendants Arthur  
3 Gerrans and James Crowley, who were the San Francisco Police Department inspectors \  
4 investigating the case. (FAC ¶ 14.) Joaquin denied being involved in the murder, and he explained  
5 that, on the night of the murder, he had been driven around by a man named George Varela before  
6 being dropped off at home. (FAC ¶ 15.) Joaquin offered to help the inspectors, including by giving  
7 them Varela’s physical description and that of his car, as well as his contact information. (FAC ¶  
8 16.) Around this time, Plaintiffs allege that Gerrans and Crowley had determined that Joaquin was  
9 their primary suspect, and they did not meaningfully investigate any other suspects. (FAC ¶ 17.)

10 Gerrans and Crowley then interviewed Varela, who was an 18-year-old drug addict. (FAC  
11 ¶ 18.) Varela first supported Joaquin’s alibi by saying they had been driving in his white Monte  
12 Carlo earlier that evening, they had gone to an arcade, and then he drove Joaquin home. (FAC ¶  
13 19.) Plaintiffs claim that after the inspectors pressured Varela to implicate Joaquin, including by  
14 threatening to charge Varela with the murder, Varela told the inspectors that he had driven Joaquin  
15 to the alleyway where Bastarrica was killed, and that Joaquin was the shooter. (FAC ¶¶ 18-21.)  
16 The statements Varela made during this interview in part led to the arrest and charging of Joaquin  
17 on April 19, 1990. (FAC ¶ 23.)

18 Plaintiffs claim Gerrans and Crowley also exerted undue influence on other witnesses  
19 involved in the investigation, including two eyewitnesses to the shooting, Kenneth Duff and  
20 Kathleen Guevara. (FAC ¶¶ 24-31.) This included pressuring Duff and Guevara to identify  
21 Joaquin even where they were uncertain. *See id.* Both witnesses later testified at Joaquin’s  
22 criminal trial that he was the killer. (FAC ¶ 31.)

23 In addition, Plaintiffs claim Gerrans and Crowley’s investigation uncovered evidence that  
24 supported Joaquin’s innocence, which they improperly ignored. (FAC ¶¶ 32-46.) This included  
25 inconsistencies between Joaquin’s appearance and that of the shooter the day of the murder,  
26 including his clothing and hairstyle, as well as the timing of when Joaquin was at certain locations  
27 the day of the shooting. (FAC ¶¶ 33-34.)

28 The investigation also led Gerrans and Crowley to interview Plaintiff Yojana Paiz, who

1 told them that the night of the murder, Joaquin had arrived at home after being out with Varela and  
2 was spending time with her when the murder was alleged to have occurred. (FAC ¶ 38.) At the  
3 time, Paiz was in a romantic relationship with Joaquin Ciria, and had given birth to their son,  
4 Plaintiff Pedro Ciria, prior to Joaquin's arrest. (FAC ¶¶ 80–82.)

5 Joaquin was convicted at his criminal trial in part due to the testimony of Varela, Duff, and  
6 Guevara. (FAC ¶¶ 47, 53.) In exchange for his testimony, Varela was provided with leniency in  
7 unrelated criminal prosecutions and housing accommodations. (FAC ¶¶ 55-57.) And Guevara  
8 received a cash payment after the trial. (FAC ¶ 58.)

9 **B. Plaintiffs' Relationship with Joaquin Ciria**

10 Plaintiff Paiz began a romantic relationship with Joaquin Ciria in May 1989. (FAC ¶ 80.)  
11 They moved in together shortly thereafter and “were each other’s significant other.” *Id.* They  
12 discussed getting married. *Id.* Paiz became pregnant, and Plaintiff Pedro Ciria was born in  
13 February 1990. (FAC ¶ 81.) Two months later, on April 19, 1990, Joaquin Ciria was arrested. *Id.*  
14 ¶ 82.

15 Following his arrest, Plaintiffs’ interactions with Joaquin consisted of visiting the various  
16 institutions at which he was incarcerated. (FAC ¶¶ 82-86, 89-90.) The strain of only being able to  
17 interact with him while he was incarcerated, sometimes far from where Plaintiffs lived, took an  
18 emotional toll. (FAC ¶ 87.) Pedro missed out on having his father present for milestones in his  
19 life, while Paiz and Joaquin’s romantic relationship ended in 1996. (FAC ¶¶ 89-90.)

20 **C. Joaquin Ciria’s conviction was vacated.**

21 On January 19, 2021, Joaquin filed a petition for writ of *habeas corpus* in the San  
22 Francisco Superior Court that focused on the allegedly false testimony given at his criminal trial in  
23 addition to new evidence discovered after the trial. (FAC ¶¶ 63, 65.) The San Francisco District  
24 Attorney’s Office submitted two returns to the petition and admitted that Joaquin’s conviction  
25 rested on false testimony and evidence. (FAC ¶¶ 64-65.) On April 18, 2022, Joaquin’s conviction  
26 was vacated, and he was released from prison on April 20, 2022. (Compl., J.C. Dkt. No. 1 ¶ 3.)

27 **D. Procedural Background**

28 This case follows Joaquin’s related civil rights case pending before this Court. *See Ciria v.*

1 *City and County of San Francisco*, 22-cv-07510-KAW.

2 As discussed above, this case was filed by Joaquin's then-girlfriend and his son. Plaintiffs  
3 presented their government tort claims on October 17, 2022, and the City and County of San  
4 Francisco denied them on December 7, 2022. (FAC ¶ 3.) Plaintiffs filed the first amended  
5 complaint on October 2, 2023, which alleged three causes of action: loss of familial association  
6 under § 1983, intentional infliction of emotional distress, and negligent infliction of emotional  
7 distress.

8 On October 16, 2023, Defendants filed a motion to dismiss. (Defs.' Mot., Dkt. No. 26.)  
9 On November 2, 2023, Plaintiffs filed an opposition. (Pls.' Opp'n, Dkt. No. 30.) On November  
10 14, 2023, Defendants filed a reply. (Defs.' Reply, Dkt. No. 31.)

## 11 II. LEGAL STANDARD

### 12 A. Motion to Dismiss

13 Under Federal Rule of Civil Procedure 12(b)(6), a party may file a motion to dismiss based  
14 on the failure to state a claim upon which relief may be granted. A motion to dismiss under Rule  
15 12(b)(6) tests the legal sufficiency of the claims asserted in the complaint. *Navarro v. Block*, 250  
16 F.3d 729, 732 (9th Cir. 2001).

17 In considering such a motion, a court must “accept as true all of the factual allegations  
18 contained in the complaint,” *Erickson v. Pardus*, 551 U.S. 89, 94 (2007) (per curiam) (citation  
19 omitted), and may dismiss the case or a claim “only where there is no cognizable legal theory” or  
20 there is an absence of “sufficient factual matter to state a facially plausible claim to relief.”  
21 *Shroyer v. New Cingular Wireless Servs., Inc.*, 622 F.3d 1035, 1041 (9th Cir. 2010) (citing  
22 *Ashcroft v. Iqbal*, 556 U.S. 662, 677-78 (2009); *Navarro*, 250 F.3d at 732) (internal quotation  
23 marks omitted).

24 A claim is plausible on its face when a plaintiff “pleads factual content that allows the  
25 court to draw the reasonable inference that the defendant is liable for the misconduct alleged.”  
26 *Iqbal*, 556 U.S. at 678 (citation omitted). In other words, the facts alleged must demonstrate “more  
27 than labels and conclusions, and a formulaic recitation of the elements of a cause of action will not  
28 do.” *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007). “Threadbare recitals of the elements of

1 a cause of action” and “conclusory statements” are inadequate. *Iqbal*, 556 U.S. at 678; *see also*  
2 *Epstein v. Wash. Energy Co.*, 83 F.3d 1136, 1140 (9th Cir. 1996) (“[C]onclusory allegations of  
3 law and unwarranted inferences are insufficient to defeat a motion to dismiss for failure to state a  
4 claim.”). “The plausibility standard is not akin to a probability requirement, but it asks for more  
5 than a sheer possibility that a defendant has acted unlawfully . . . When a complaint pleads facts  
6 that are merely consistent with a defendant’s liability, it stops short of the line between possibility  
7 and plausibility of entitlement to relief.” *Iqbal*, 556 U.S. at 678 (quoting *Twombly*, 550 U.S. at  
8 557) (internal citations omitted).

9 Generally, if the court grants a motion to dismiss, it should grant leave to amend even if no  
10 request to amend is made “unless it determines that the pleading could not possibly be cured by  
11 the allegation of other facts.” *Lopez v. Smith*, 203 F.3d 1122, 1127 (9th Cir. 2000) (citations  
12 omitted).

#### 13       B.     Request for Judicial Notice

14 As a general rule, a district court may not consider any material beyond the pleadings in  
15 ruling on a motion to dismiss for failure to state a claim. *Lee v. City of Los Angeles*, 250 F.3d 668,  
16 688 (9th Cir. 2001). A district court may take notice of facts not subject to reasonable dispute that  
17 are “capable of accurate and ready determination by resort to sources whose accuracy cannot  
18 reasonably be questioned.” Fed. R. Evid. 201(b); *United States v. Bernal-Obeso*, 989 F.2d 331,  
19 333 (9th Cir. 1993). “[A] court may take judicial notice of ‘matters of public record,’” *Lee*, 250  
20 F.3d at 689 (citing *Mack v. S. Bay Beer Distrib.*, 798 F.2d 1279, 1282 (9th Cir. 1986)), and may  
21 also consider “documents whose contents are alleged in a complaint and whose authenticity no  
22 party questions, but which are not physically attached to the pleading” without converting a  
23 motion to dismiss under Rule 12(b)(6) into a motion for summary judgment. *Branch v. Tunnell*,  
24 14 F.3d 449, 454 (9th Cir. 1994), overruled on other grounds by *Galbraith v. Cnty. of Santa Clara*,  
25 307 F.3d 1119 (9th Cir. 2002). The court need not accept as true allegations that contradict facts  
26 which may be judicially noticed. *See Mullis v. United States Bankruptcy Ct.*, 828 F.2d 1385, 1388  
27 (9th Cir. 1987).

### III. DISCUSSION

## A. Request for Judicial Notice

As an initial matter, Defendants ask that the Court take judicial notice of the following documents: 1) Excerpts from the Reporter's Transcript of Proceedings in *People v. Joaquin Ciria*, San Francisco Superior Court Case No. 137440; and 2) Government Tort Claim forms for Plaintiff Yojana Paiz (Claim No. 23-00580) and Pedro Ciria (Claim No. 23-00581). (Def.'s Req. for Judicial Notice, "RJN," Dkt. No. 27.)

Plaintiffs do not oppose the request for judicial notice. Nonetheless, the Court denies the request regarding Exhibit 1, because the transcript of the 1991 trial is not relevant to the pending motion, which concerns pretrial conduct.

Exhibit 2 are Plaintiffs' government tort claim forms. Under the incorporation by reference doctrine, the Court may consider an extrinsic document that the plaintiff refers to extensively or that "forms the basis of the plaintiff's claim." *United States v. Ritchie*, 342 F.3d 903, 908 (9th Cir. 2003). Here, Plaintiffs do not oppose the claims forms, which they filed to satisfy the administrative exhaustion requirement, and to which they cite to in the complaint, so the Court finds that they are incorporated by reference.

Accordingly, Defendants' request for judicial notice is granted in part and denied in part.

## B. Motion to Dismiss

**i. Substantive Due Process Claim (§ 1983)**

Defendants argue that Plaintiffs' substantive due process claim fails for three reasons. First, that the courts do not recognize family member's right to sue based on wrongful conviction that incidentally interferes with a familial relationship. (Defs.' Mot. at 5.) Second, that Defendants' conduct does not shock the conscience. (Defs.' Mot. at 9.) Third, that Defendants are entitled to qualified immunity. (Defs.' Mot. at 11.) The Court will address each argument below.

a. Standing

Defendants initially sought to dismiss both plaintiffs' federal claims on the grounds that the Ninth Circuit has not recognized a child's or unmarried spouse's right to sue under the Fourteenth Amendment based on the impact a wrongful conviction may have on the right to

1 familial association. (See Defs.’ Mot. at 5.) Plaintiffs cited to binding legal authority in their  
2 opposition, and Defendants conceded in their reply that the Ninth Circuit recognized that this right  
3 does exist within the confines of the parent-child relationship, such that Plaintiff Ciria’s claim may  
4 be viable. (See Defs.’ Reply at 2 (citing *Lee v. City of Los Angeles*, 250 F. 3d 668, 685-86 (9th Cir.  
5 2001).)

6 Defendant maintains that such claims do not extend to unmarried, romantic partners.  
7 (Defs.’ Reply at 2.) The United States Courts of Appeals are split, and, while the Ninth Circuit  
8 has not recognized this right, at least one court in this district has allowed such a claim to proceed.  
9 *Garcia v. Cnty. of Napa*, No. 21-CV-03519-HSG, 2022 WL 110650, at \*3 (N.D. Cal. Jan. 12,  
10 2022) (girlfriend had standing for loss of familial association claim); *see also Peck v. Montoya*, 51  
11 F.4th 877, 893 (9th Cir. 2022) (While the Ninth Circuit has not held that a spouse can assert a  
12 familial association claim, “other courts of appeals have reached conflicting conclusions.” The  
13 Ninth Circuit ultimately refrained from making any determination.) Defendants argue that the  
14 Ninth Circuit’s decision to refrain from recognizing a spouse’s right to assert this claim should be  
15 instructive, since an unmarried partner should not enjoy greater legal rights. (Defs.’ Reply at 3.)  
16 The Court agrees.

17 Marriage confers legal rights beyond those enjoyed by purely romantic relationships.  
18 While Plaintiff Paiz cohabitated with Joaquin, had child with him, and maintained their romantic  
19 relationship for several years after his conviction, they never legally married, and his subsequent  
20 incarceration did not prevent them from doing so. Furthermore, the *Garcia* case is factually  
21 distinguishable, as the “de facto wife” lived with the decedent and their three children for over 20  
22 years. *Garcia*, 2022 WL 110650, at \*3. While having no precedential value, the Ninth Circuit  
23 recently issued an unpublished memorandum in which the panel found that the spouse’s right to  
24 familial association was not clearly established, thereby entitling the defendants to qualified  
25 immunity. *See Hampton v. California*, No. 22-15481, 2023 WL 6443897, at \*1 (9th Cir. Oct. 3,  
26 2023). Despite ample opportunity, the Ninth Circuit has not extended a Fourteenth Amendment  
27 familial association claim to a married spouse, and the Court declines to extend a legal right to an  
28 unmarried partner that a legal spouse does not clearly enjoy. Thus, Plaintiff Paiz lacks standing to

1 assert a familial association claim under the Fourteenth Amendment. At the hearing, Plaintiffs  
2 requested leave to amend to allege a familial association claim under the First Amendment. Thus,  
3 Plaintiff Paiz's § 1983 claim is dismissed with leave to amend.

4 Accordingly, the Court finds that Plaintiff Ciria has standing to assert a familial association  
5 claim under the Fourteenth Amendment. Plaintiff Paiz's claim is dismissed, as she does not have  
6 standing to assert a claim under the Fourteenth Amendment, but she is granted leave to amend to  
7 allege a claim under the First Amendment.<sup>2</sup>

8 b. Whether the alleged conduct was conscience shocking.

9 Defendants argue that even if Plaintiffs have standing to assert the federal claim, they fail  
10 to meet their burden of showing that the conduct "shocks the conscience." (Defs.' Mot. at 9.)

11 The standard of culpability for a due process right to familial association claim is one that  
12 "shocks the conscience." *Porter v. Osborn*, 546 F.3d 1131, 1137 (9th Cir. 2008) (quoting *Cnty. of  
13 Sacramento v. Lewis*, 523 U.S. 833, 846 (1998)). A defendant acts with deliberate indifference in  
14 the context of deprivations of familial relationships when they "recognize the unreasonable risk  
15 and actually intend to expose the [victim] to such risks without regard to the consequences to the  
16 [victim]." *Herrera v. Los Angeles Unified Sch. Dist.*, 18 F.4th 1156, 1158 (9th Cir. 2021).  
17 Defendants contend that "no constitutional violation occurred because the allegations in the FAC  
18 do not describe any actions that are intolerable or unaccepted law enforcement practices in the  
19 context of a criminal investigation." (Defs.' Mot. at 9.)

20 In opposition, Plaintiffs argue that Defendants violated Joaquin's rights "systematically  
21 and deliberately over a long period of time by engaging in malicious prosecution, conspiracy to  
22 violate his civil rights, by withholding exculpatory evidence, and fabricating evidence, resulting in  
23 Mr. Ciria being incarcerated for three decades." (Pls.' Opp'n at 15 (citing FAC, ¶¶ 92-101).)

24 The Court agrees with Plaintiffs that this conduct, if true, is intolerable and unacceptable,  
25 and surely "shocks the conscience." The Court denies the motion on these grounds.

26 //

---

27  
28 <sup>2</sup> For clarity in the pleadings, Plaintiffs are asked to allege the First and Fourteenth Amendment  
claims as separate causes of action.

### c. Qualified Immunity

Defendants contend that the federal claim should be dismissed because the individual defendants are entitled to qualified immunity. (Defs.’ Mot. at 11.) Defendants argue that the officers are entitled to qualified immunity because there was no constitutional violation and because Plaintiffs’ substantive due process right to be free from interference in familial association was not clearly established in 1990 and 1991. *Id.* at 11-12.

In opposition, Plaintiffs argue that the loss of familial association derives from Joaquin's § 1983 claim, so what matters is whether Defendants were on notice that their conduct was unconstitutional as to the underlying claim. (Pls.' Opp'n at 10.) Indeed, the Ninth Circuit denied qualified immunity for a police detective on the grounds that it was clearly established that he had to disclose exculpatory evidence, before finding that the children could proceed with their dependent claims for loss of familial association for the time their mother spent in prison. *See Mellen v. Winn*, 900 F.3d 1085, 1103 (9th Cir. 2018).

Thus, based on the allegations that the individual defendants pressured witnesses to provide false testimony leading to Joaquin's arrest and conviction, the Court finds that the officers are not entitled to qualified immunity.

Accordingly, the motion is denied as to the § 1983 claim.

## ii. Emotional Distress Claims

Plaintiffs second and third causes of action are for intentional infliction of emotional distress and negligent infliction of emotional distress. (FAC ¶¶ 102-115.)

a. California Government Code § 821.6 limits state law claims

Defendants argue that Plaintiffs' state law claims are barred by the "absolute immunity" conferred by California Government Code § 821.6. (Defs.' Mot. at 12.) Alternatively, Defendants argue that any damages are limited to the few days between Joaquin's arrest and arraignment. (Defs.' Reply at 7.)

In opposition, Plaintiffs note that the same argument was made in Joaquin’s underlying case, and it was already rejected by the undersigned. (Pls.’ Opp’n at 16 (citing J.C. Dkt. No. 31 at 12:10-14:2).) In reply, Defendants explained that Plaintiffs mistakenly relied on the May 15, 2023

1 order, which was later reconsidered based *Leon v. County of Riverside*, 14 Cal. 5th 910 (2023).  
2 (Defs.' Reply at 7.) Defendants are correct, and Plaintiffs conceded this fact at the hearing.

3 Indeed, in the September 26, 2023 order granting reconsideration in part, the court found  
4 that, under *Leon*, § 821.6 conferred immunity on the officers for Joaquin's post-arraignment  
5 incarceration. (See J.C. Dkt. No. 62 at 2.) Thus, the officers are not immune from liability for  
6 Joaquin's false arrest and imprisonment that occurred prior to arraignment. *Id.* (citing *Leon*, 14  
7 Cal. 5th at 919.)

8 Accordingly, and consistent with the reconsideration order in the related case, the Court  
9 grants the motion to dismiss in part, and finds that § 821.6 confers immunity from the state law  
10 claims post-arraignment, such that Defendants are only liable for the short time-period between  
11 Joaquin's arrest and his arraignment in 1990.

12 b. State law claims are not time-barred.

13 Defendants argue that Plaintiffs' state law claims are time-barred, because they are  
14 premised on his false imprisonment and pre-arraignment confinement in 1990. (Defs.' Mot. at 15.)  
15 The Court disagrees. California Government Code § 911.2 requires plaintiffs to present  
16 government claims "not later than six months after the accrual of the cause of action." Cal. Gov't  
17 Code § 911.2(a). As Plaintiffs argue in their opposition, claims related to Joaquin's false  
18 imprisonment did not accrue until his conviction was vacated in 2022. (See Pls.' Opp'n at 17.) "It  
19 is settled that a cause of action for false imprisonment accrues on the person's release from  
20 incarceration." *Torres v. Dep't of Corr. & Rehab.*, 217 Cal. App. 4th 844, 848, 158 Cal. Rptr. 3d  
21 876, 879 (2013) (citing *Scannell v. County of Riverside*, 152 Cal. App.3d 596, 606 (1984)).  
22 Joaquin was released from custody on April 20, 2022, and Plaintiffs filed their government claim  
23 on October 17, 2022 – a few days before the six-month deadline. (See RJN, Ex. 2.) Thus,  
24 Plaintiffs' state law claims are not time-barred.

25 c. Intentional Infliction of Emotional distress claim

26 The second cause of action is for intentional infliction of emotional distress. (FAC ¶¶ 102-  
27 108.) Regarding Plaintiff Ciria, Defendants argue that he was only two months old at the time of  
28 Joaquin's arrest and cannot plausibly allege the necessary emotional distress to state a claim.

1 (Defs.’ Mot. at 17-18.) To recover under a bystander theory, the plaintiff must contemporaneously  
2 and meaningfully understand the causal connection between the defendants’ harmful conduct and  
3 his father’s injury. *See Downey v. City of Riverside*, 90 Cal. App. 5th 1033, 1054 (2023). Given  
4 that Plaintiffs may only recover damages post-arrest and pre-arrangement, Plaintiff Ciria has not  
5 alleged facts to suggest that he experienced emotional distress contemporaneously and that he  
6 understood what was happening at the time of Joaquin’s arrest. While it may defy common sense  
7 that a two-month-old child could understand that his father’s absence was due to police fabricating  
8 evidence, that is not a determination the Court will make at the pleadings stage. Therefore,  
9 Plaintiff Ciria’s claim is dismissed with leave to amend. He should not amend if he cannot allege  
10 in good faith facts to support the allegation that he contemporaneously and meaningfully  
11 understood the situation in March 1990.

12 Regarding Plaintiff Paiz, Plaintiffs conceded that her claim was not adequately pled, and  
13 they requested leave to amend to plead the elements set forth in California Civil Jury Instruction  
14 No. 1600. The Court notes that, unlike claims for negligent infliction of emotional distress,  
15 California law does not require a plaintiff to prove a special relationship to prevail on a claim of  
16 intentional infliction of emotional distress so long as the conduct is extreme and outrageous.  
17 *Crouch v. Trinity Christian Ctr. of Santa Ana, Inc.*, 39 Cal. App. 5th 995, 1009, 253 Cal. Rptr. 3d  
18 1, 15 (2019).

19 Thus, the second cause of action is dismissed with leave to amend.

20 d. Negligent Infliction of Emotional Distress (“NIED”) Claim

21 The third cause of action is for negligent infliction of emotional distress. (FAC ¶¶ 109-  
22 115.) Negligent infliction of emotional distress is not an independent tort. Rather, it is a  
23 negligence claim, and the traditional elements apply. *Burgess v. Superior Ct.*, 2 Cal. 4th 1064,  
24 1072, 831 P.2d 1197 (1992). The allegations in the complaint, however, consist of intentional  
25 conduct, such as witness intimidation and the fabrication of evidence. Plaintiffs do not cite to any  
26 facts that suggest negligence. At the hearing, Plaintiffs conceded that they do not have a factual  
27 basis to support a claim for negligent infliction of emotional distress, so the third cause of action is  
28 dismissed without leave to amend.

#### IV. CONCLUSION

For the reasons set forth above, Defendants' motion to dismiss is GRANTED IN PART AND DENIED IN PART. Specifically, the first cause of action under § 1983 is dismissed as to Plaintiff Paiz, but she is granted leave to amend to allege a loss of familial association under the First Amendment. The second cause of action for intentional infliction of emotional distress is dismissed with leave to amend, and it is limited temporally by California Government Code § 821.6 to the time period between Joaquin Ciria's arrest and arraignment. The third cause of action for negligent infliction of emotional distress claim is dismissed with prejudice. The motion is denied in all other respects.

Plaintiffs shall file an amended complaint within 14 days of this order.

IT IS SO ORDERED.

Dated: February 22, 2024

KANDIS A. WESTMORE  
United States Magistrate Judge